
(1960) 10 MAD CK 0018

In the Madras High Court

Case No : Writ Petition No. 1242 of 1959

Gnanamuthu Nadar

APPELLANT

Vs

The Election Commissioner Tenkasi and Others

RESPONDENT

Date of Decision : 14-10-1960

Acts Referred:

Constitution of India, 1950 — Article 226

Madras Village Panchayats Rules, 1950 — Rule 4(6), 5(2)

Citation : (1961) ILR (Mad) 607

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Advocate : T.R. Mani, for the Appellant; C.A. Mohamed Ibrahim, for the Respondent

Judgement

Rajagopalan, J.—Elections had to be held to fill four seats for Ward Number 4 of Karuvantha Panchayat in Tirunelveli district. It was classed as a Class II panchayat. Nominations were filed on behalf of the Petitioner and Respondents 2 to 7. Before the notified date of election, 19th September 1958, Respondents 6 and 7 withdrew their nominations. On a scrutiny of the remaining nominations, the election officer rejected the nominations filed on behalf of the Petitioner. Respondents 2 to 5 were the four candidates left in the field to fill the four seats. They were declared elected without a poll.

2. On behalf of the Petitioner, two nomination papers, marked exhibits A-3 and A-4 were filed before the election officer. It was not in dispute that exhibit A-3 was filed prior to exhibit A-4. The election officer rejected exhibit A-3 on the ground that the persons who had seconded the nomination of the Petitioner was not a registered voter. The second nomination paper, exhibit A-4, was rejected on the ground, that the Rules did not provide for more than one nomination paper being filed by a candidate. The Petitioner challenged the validity of the election of Respondents 2 to 5 by an election petition, Original Petition Number 54 of 1958. The Election Commissioner dismissed that application by his order, dated 12th

August 1959 The election commissioner was of the view that exhibit A-3 had been rightly rejected by the election office, though that conclusion was based on grounds different from those taken by the election officer. The Election Commissioner held that since exhibit A-3 had not been signed either by the proposer or the seconder, it was not a valid nomination paper; it contravened Rule 5(2) of the Rules framed under the Madras Village Panchayats Act for conduct of elections of members to panchayats, Part II, The Election Commissioner agreed with the election officer that exhibit A-4 had to be rejected, because there was no provision in the Rules for the receipt of a second nomination paper.

3. The Petitioner applied under Article 226 of the Constitution for the issue of a certiorari to set aside the order of the Election Commissioner.

4. There was no express provision in the Rules in Part II governing the conduct of elections to Class II panchayats either for or against the receipt of more than one nomination paper for a candidate. With reference to elections for Class I panchayats, governed by Part I of the Rules, Rule 4(6) provided:

The rejection of a nomination paper of any candidate on the ground of any irregularity in respect thereof shall not affect the validity of the nomination of the candidate if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

5. There was no corresponding provision in Part II with reference to Class II panchayats. Even Rule 4(6), I have referred to, does not in express terms authorise more than one nomination paper being filed for a candidate, but by necessary intendment it does provide for the receipt of more nomination papers than one. Any of those nominations, if valid, could be accepted. The question now is, whether the absence of even such a provision, as Rule 4 (6) of Part I, in Rules in Part II amounts to a prohibition by necessary intendment of the receipt of more than one nomination paper for a candidate. It should be noted that the original set of Rules for election to Class II panchayats, provided for voting by show of hands, without the formality of nomination papers and polls required in the case of Class I panchayats. The nomination was to precede the actual election only by two hours. When the Rules were revised providing for election to Class II panchayats also by poll and ballot, the Rule making authority did not incorporate in Part II all the Rules found in Part I. Why it failed to re-produce the Rules it is not for me to investigate. The question still remains whether the failure to provide in Part II a Rule analogous to Rule 4(6) applicable to Part I by necessary intendment confines a candidate for election to Class II panchayats to one nomination paper only, and whether by necessary intendment there is a prohibition against the receipt of more than one nomination paper for a candidate. It should be realised that the practice with reference to election to all elective seats in Local Boards and Legislatures has all along been to permit more than one Election nomination paper with reference to each candidate. "Whether the nomination papers were signed by the same set of proposers and seconders

or different sets of proposers and seconders could make no difference in principle. In this case, it so happened that exhibits A-3 and A-4 purported to emanate from the same set of persons as proposer and seconder. The question is, can there be a multiplicity of nomination papers. I am unable to agree with the Election Commissioner that failure to provide a Rule analogous to Rule 4(6) of Part I in Part II prohibited the receipt of more than one nomination paper, and on that ground exhibit A-4, being a nomination paper filed second in point of time, was liable to be rejected. As I have pointed out, there is no prohibition against the receipt of second nomination paper for the same candidate. Nor was there any prohibition by necessary intendment of the Rules in Part II of the Rules. The view taken by the Election Commissioner on an interpretation of the Rules in Part II was wrong, and it constituted an error of law apparent on the face of the record. The final conclusion of the Election Commissioner, that exhibit A-4 was not a valid nomination paper, was vitiated by that error of law, and the petition will have to be allowed.

6. The Rule nisi is made absolute and the order of the Election Commissioner in Original Petition Number 54 of 1958 will stand set aside. That in effect means that the Election Commissioner will have to dispose of the petition afresh and in accordance with law on a correct interpretation of the relevant Rules. The petition is allowed. No order as to costs.